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EXCEPTION

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AZ CORP COMMISSION
DOCKET CONTROL**ORIGINAL****BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE
 COMMISSION ON ITS OWN MOTION
 INVESTIGATING THE FAILURE OF
 TRUXTON CANYON WATER
 COMPANY TO COMPLY WITH
 COMMISSION RULES AND
 REGULATIONS.

DOCKET NO. W-02168A-10-0247

**EXCEPTIONS TO THE RECOMMENDED
OPINION AND ORDER**

Truxton Canyon Water Company, Inc. ("Truxton" or "Company") hereby files its
 exceptions to the Recommended Opinion and Order (Recommendation") in this case.

Preliminary Statement

First and foremost, it is important to note that Staff first made these allegations in
 2010. Four years have passed and during this time the Company has continued to
 provide water to its customers and corrected many of the issues raised by Staff in its
 initial complaint. The Company has asked for authority to finance additional
 improvements, but these requests have not been granted to date.

Alleged Violation of A.R.S. § 40-202.L

Arizona Corporation Commission

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1 A.R.S. § 40-202.L states public service corporation shall comply with every order,
2 decision, rule or regulation made by the Commission in any matter relating to or affecting
3 its business as a public service corporation and shall do everything necessary to secure
4 compliance with and observance of every such order, decision, rule or regulation.
5

6 Primarily, the Recommendation states that Truxton is violating this statute because it has
7 not obtained the water production and delivery assets owned by the Trust and directed in
8 Decision No. 72386.

9 However, this argument is misplaced. First and foremost, Truxton cannot compel
10 the Trust to transfer its wells and other equipment to the Company. Just as important,
11 Truxton has offered three plans regarding how it could acquire the assets necessary to
12 provide service. The Company has suggested that the Company can buy the Trust's
13 wells and pipeline for fair value; the Company can lease to own the wells and pipeline;
14 and the Company can purchase the wells and pay the Trust to wheel water through the
15 pipeline. *See* Notice of Filing Rebuttal Testimony and Exhibits; Rebuttal Testimony of
16 Rick Neal, at p. 6 (Jan. 27, 2012). But Staff refuses to address the substance of these
17 proposals. Essentially, Staff has taken the position that the Trust should simply give the
18 assets to the Company. *See* Rick Neal's Testimony, Tr. p. 286 – 287. Moreover, this
19 decision is under being reheard. Finally, these are controlled by the Trust, not Truxton.
20 Thus, the record shows that the Company has acted in good faith and it should not be
21 penalized where Staff is essentially demanding that the Trust hand over the property free
22 of charge.
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1 **Alleged Violation of A.R.S. § 40-204.A**

2 A.R.S. § 40-204.A requires utilities to furnish the Commission documents in the
3 form the Commission prescribes. Staff asserted that Truxton commingled funds and this
4 violates A.R.S. § 40-204.A. However, this statute does not address commingling of
5 funds; it requires the Company to furnish the Commission information in forms
6 prescribed by the Commission, such as annual reports. Truxton never failed to furnish
7 the Commission with any Company documents. Moreover, Staff admitted that Truxton is
8 no longer commingling funds. *See* Closing Brief at p. 9, line 2.
9

10 In addition, Staff also argues that Truxton was willfully reporting inaccurate
11 water loss figures. *Id.* at p. 9, lines 8-11. However, this is simply not true. As Staff
12 knows, under the water supply agreement Truxton only paid for water actually delivered
13 to its customers, and accordingly, Truxton was reporting the amount of water purchased
14 from the Trust and delivered to the customer, which was the same amount. *See id.* at p.
15 9, lines 8 – 13. Truxton never denied there were water losses; but they were losses
16 attributable to the Trust. Therefore, it cannot be claimed that Truxton was not filing
17 accurate data with the Commission.
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20 **Alleged Violation of A.R.S. § 40-221.C**

21 A.R.S. § 40-221.C states a utilities cannot keep additional records unless the
22 records are explanatory or supplemental. Staff argues Truxton violated this statute
23 because its records were not kept according to NARUC or GAPP. *See* Staff's Closing
24 Brief at p. 7 and 8. But this statute allows water companies like Truxton to keep
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1 explanatory and supplemental records. *See* A.R.S. § 40-221.C. Admittedly, Truxton
2 does not always maintain all of its records in conformance with NARUC and GAAP.
3 They are no different than any other small water company. Therefore, a finding that
4 Truxton has violated A.R.S. § 40-221.C is not proper.

6 **Alleged Violation of A.R.S. § 40-301.B**

7 A.R.S. § 40-301.B allows a public service corporation to assume debts payable
8 within a year; however, such corporations need Commission approval if the debt term is
9 longer than a year. Staff claims that the long-term liability appearing on the Company's
10 balance sheet has violated this rule. But this alleged long-term debt was simply an
11 accountant reclassification from accounts payable to long term debt. *See* Notice of Filing
12 Documents Requested by Court, Attachment 2, Letter from Hilarie Pierce (Mar. 8, 2012).
13 The accounts payable grew to over \$400,000 because Truxton could not pay the Trust for
14 water purchases, management, and other fees payable to the Trust. *See id.* In other
15 words, the Company's debt arose because it could not pay its bills. Over the years, the
16 Trust has been giving money to Truxton and the accounts payable grew. *See id.*; and *see*
17 Neal Testimony, Tr. p. 280, lines 13 - 17. In sum, the owner of the company, the Trust,
18 put more than \$400,000 into the Company over many years to cover the costs to operate
19 the system and pay its expenses; this was not long-term debt, even if tax accountants later
20 classified it because the Company could not pay the bills.

23 Staff is arguing (1) Truxton's debt exceeding \$400,000 to the Trust should be
24 erased as "paid in capital" and (2) the Company should face fines and penalties, including
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1 taking of the Company from the owner's control. In other words, Staff's position is that
2 because the Trust did not get Commission approval every time the Company failed to pay
3 its water bill or management fee expenses, the debt should be erased, the Commission
4 should fine the Company, and control of the Company should be taken away from the
5 owners. Further, Staff has never explained how these payments, or deferral of payments,
6 constitutes long-term debt. In short, recognition of Truxton's outstanding balance is not a
7 violation of the rules.
8

9 **Alleged Violation of A.R.S. § 40-302.A.**

10 Similarly, A.R.S. § 40-302.A requires water companies to secure Commission
11 authority before taking a long-term loan. Essentially, this is the same argument as above,
12 and Staff applies the same argument here as it does for A.R.S. § 40-301.B. By this
13 reference, Truxton incorporates its argument set forth in the subsection addressing A.R.S.
14 § 40-301.B, noting again that the money at issue was an account payable, not a long-term
15 debt. Therefore, applying penalties and fines is not appropriate.
16

17 **Alleged Violation of A.A.C. R14-2-406.M**

18 A.A.C. R14-2-406.M states "[a]ll agreements under this rule shall be filed with
19 and approved by the Utilities Division of the Commission. No agreement shall be
20 approved unless accompanied by a Certificate of Approval to Construct as issued by the
21 Arizona Department of [Environmental Quality]." Staff now agrees that Truxton has not
22 violated this statute with respect either Mr. Bacus or Northern Arizona Consolidated Fire
23 District (NACFD). See Recommendation at p. 24-25. Neither of these agreements
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1 constituted a main extension agreement. At the hearing, Rick Neal testified to this fact.
2 *See* Transcript dated Mar. 1, 2012, at p. 290, line 23 – p. 291, line 2. Neither at the
3 hearing nor in the Closing Brief does Staff contest this point. *See*, e.g. Staff’s Closing
4 Brief at p. 10. Thus, the allegation that Truxton violated A.A.C. R14-2-406.M should be
5 dismissed.
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7 To be clear, Truxton did receive money from Mr. Bacus to put in a line extension.
8 While the Company purchased materials to construct the line, Mr. Bacus never provided
9 final plans or engineered drawings so a line extension agreement could be sent to the
10 Commission for approval. Nevertheless, Mr. Bacus has been repaid in full. *See*
11 Attachment 1.
12

13 **Alleged Violation of A.A.C. R14-2-407.A**

14 A.A.C. R14-2-407.A requires water companies to provide potable water to its
15 customers. Water delivered by Truxton to its customers is potable. The term potable
16 means drinkable. *See* Merriam Webster Dictionary, term “potable” ([www.merriam-](http://www.merriam-webster.com)
17 [webster.com](http://www.merriam-webster.com), 2012). At the hearing, Rick Neal testified that the water is drinkable. *See*
18 Rehearing Transcripts at p. 325, line 13 – p. 326, line 13. Nowhere on the record does
19 Staff or other party dispute that the water is drinkable. It is important to note that at no
20 time has Staff or the Arizona Department of Environmental Quality (“ADEQ”) asked or
21 demanded that Truxton stop serving water to its customers because it is not safe to drink.
22 If the water was truly nonpotable, ADEQ and the Commission would be compelled to
23 protect the public and stop Truxton from serving it to customers. The fact that this has
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1 not occurred shows that both Staff and ADEQ believe the water is not unsafe to drink.

2 Nevertheless, to support its claim that Truxton violated A.A.C. R14-2-407.A, Staff
3 relies on the fact that the water now exceeds the allowable content of arsenic in drinking
4 water. First, it is important to note that in 2001 the Environmental Protection Agency
5 (“EPA”) reduced the arsenic standard from 50 parts per billion (ppb) to 10 parts per
6 billion. Second, arsenic is naturally occurring, so the exceedance is not due to any action
7 by Truxton. Third, Truxton initially detected an arsenic exceedance in 2007, six years
8 after the EPA changed the rules. Fourth, the EPA has offered small systems like Truxton
9 up to 14 years to achieve compliance with the new arsenic standards. *See* Neal
10 Testimony, Tr. at p. 326, lines 1 – 13; *see* also Attachment 1, p. 3.¹ Certainly, if water
11 exceeding 10 ppb of arsenic was nonpotable, the EPA would not allow water companies
12 throughout the United States to continue to serve it for an additional 14 years. Thus, in
13 light of these facts, the court cannot find that the water served by Truxton is nonpotable.
14

15 Lastly, Staff relies on noncompliance with ADEQ rules to establish that Truxton is
16 not providing potable water. *See* Staff’s Closing Brief at p. 5. But ADEQ has never
17 found that the water being served is nonpotable. Rather, ADEQ has determined that
18 Truxton did not comply with its monitoring and reporting rules. Nowhere on the record
19 is there any evidence that Truxton has served, or is serving, nonpotable water. Thus, the
20 allegation that Truxton has violated A.A.C. R14-2-407.A is misplaced.
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25 ¹ The court can take judicial notice of the EPA Information Sheet.

1 The Recommendation statement that Truxton willfully disregards the
2 Commission's orders is simply untrue. Truxton admits that there have been reporting
3 issues relating to ADEQ compliance. However, the only actual issue with water quality
4 is arsenic. Truxton has requested financing to pay for the construction of plant to treat
5 the arsenic, but this financing has been substantially reduced.
6

7 **Alleged Violation of A.A.C. R14-2-407.C**

8 A.A.C. R14-2-407.C states that "each utility shall make reasonable efforts to
9 supply a satisfactory and continuous level of service." To support its allegation, Staff
10 relies on the fact that "historically" ADEQ determined that Truxton has not complied
11 with several monitoring and reporting rules. *See* Staff's Closing Brief at p. 6, lines 14 –
12 20. Further, Staff incorrectly insinuates that the water served by Truxton does not meet
13 ADEQ's standards for TTHMs, HAA5s, and disinfection bi-products. *Id.* at p. 6, lines,
14 16-18. But this is simply not true. There is no evidence that the water Truxton serves
15 does not meet these ADEQ standards. What ADEQ states is that Truxton did not timely
16 file the proper reports.
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19 More importantly, Staff "concedes that several noncompliant issues have been
20 corrected or in the process of being corrected." *Id.* at p. 6, lines 21 – 22. Further,
21 nowhere does Staff explain how these monitoring and reporting issues with ADEQ
22 translate into the company not making reasonable efforts to supply a satisfactory and
23 continuous level of service to its customers. Thus, with Staff's admission that Truxton
24 either has or is correcting the ADEQ compliance issues, it would seem unreasonable to
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1 now penalize Truxton for “historic” reporting violations to another agency. Thus, the
2 Recommendation is misplaced.

3 **Alleged Violations of A.A.C. R14-2-411.A.1 and 14-2-411.A.2**

4 A.A.C. R 14-2-411.A.1 states “[e]ach utility shall make a full and prompt
5 investigation of all service complaints made by its customers, either directly or through
6 the Commission.” Similarly, A.A.C. R14-2-411.A.2 states, “[t]he utility shall respond to
7 the complainant and/or the Commission representative within five working days as to the
8 status of the utility investigation of the complaint.
9

10 The Company admits that at times in the past managers did not respond properly
11 to complaints. However, there were extenuating circumstances. When Marc Neal’s wife
12 fell ill with life-threatening lung cancer, the Company did not have money to hire another
13 manager. Rick Neal Testimony, Tr. p. 269-70. Marc Neal handed over the management
14 of the Company to Mike Neal, who was simultaneously trying to operate the water
15 system, which was simply too much for Mike Neal to address and explains why there
16 were shortcomings. But more importantly, these issues have been resolved. The
17 Company is now managed by Rick Neal, Mike Neal has returned to operations, and Marc
18 Neal is assisting both operations and management. See Rick Neal Testimony, Tr. p. 270,
19 lines 14 – 19. There is no question that the Company’s complaint service is now
20 sufficient. See Staff’s Closing Brief at p. 12, lines 18-19. Therefore, Truxton asserts that
21 the Commission should not penalize the Company since the problem, which arose due to
22 a life-threatening illness in the family, has been resolved.
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1 **Alleged Violations of A.A.C. R14-2-411.D.1 and R14-2-411.D.2.**

2 A.A.C. R14-2-411.D.1 requires utilities to “keep general and auxiliary accounting
3 records reflecting the cost of its properties, operating income and expense, assets and
4 liabilities, and all other accounting and statistical data necessary to give complete and
5 authentic information as to its properties and operations.” Similarly, A.A.C. R14-2-
6 411.D.2 requires that each utility shall maintain its books and records in conformity with
7 the NARUC Uniform Systems of Accounts for Class A, B, C and D Water Utilities.
8 Staff argues that the Companies are not compliant with NARUC and GAAP. *See* Staff’s
9 Closing Brief at p. 7.
10

11
12 The Company admits that in the past, its records were not compliant with
13 NARUC. However, this is typical of a small water company. *See* Sonn Rowell’s
14 Testimony, Tr. p. 35; and p. 83 - 85. It is undisputed that Truxton’s financial records in
15 approximately the same condition as other similarly situated small water companies. *Id.*
16 In fact, the Company now has three accountants that are working to ensure the Company
17 is complaint, and maintains compliance. *See* Rick Neal’s Testimony at p. 312, lines 21 –
18 24. Nevertheless, Staff still claims that the Company is not compliant. Yet, when asked
19 what needs to be done to become compliant, Staff told the Company it was not going to
20 tell them what was wrong. *Id.* at p. 311, lines 13 – 23. Tellingly, Truxton was able to file
21 a rate case based upon the financial data and Staff, which illustrates that records were
22 NARUC and GAAP compliant. *See* Sonn Rowell’s Testimony, Tr. at p. 85. The
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1 Commission should find that Truxton is now in material compliance with NARUC and
2 GAAP.

3 **Stipulation/Interim Manager/Transfer of Assets.**


4 Truxton hereby incorporates its arguments asserted in its Exceptions to the
5 Recommended Opinion and Order, Docket No. W-02168A-11-0363 and W-02168A-13-
6 0309, and W-02168A-13-0332 (Nov. 7, 2014).

7 **Conclusion and Action Requested.**

8 From the very beginning, Staff's intent has been to force the Trust to transfer all of
9 its assets to the Company for free. Admittedly, Truxton has made some mistakes, and the
10 Company has corrected most of these issues. But if this Recommendation and the rate
11 case recommendation are adopted, the Company will be financially crippled and unable
12 to provide water service to the community. Therefore, Truxton recommends that the
13 Commission not adopt the Recommendation at this time and order the parties to meet and
14 determine if a settlement can be reached.

15 RESPECTFULLY SUBMITTED this 10th day of November, 2014.

16 **MOYES SELLERS & HENDRICKS LTD.**

17 
18 Steve Wene

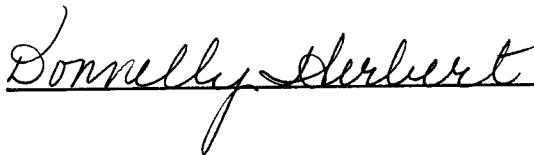
19 Original of the foregoing delivered
20 this 10th day of November, 2014 to:
21
22
23
24
25

1 Docket Control
2 Arizona Corporation Commission
3 1200 West Washington Street
4 Phoenix, Arizona 85007

5 Copy of this foregoing mailed
6 this same date:

7 Bridget A. Humphrey, Staff Attorney
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15 2394 E. Camelback Rd., Suite 600
16 Phoenix, Arizona 85016
17 Attorneys for Intervenor Valle Vista
18 Property Owners Association, Inc.

19
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22
23
24
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Attachment 1

Steve Wene

From: Teresa Neal <teresaneal@clear.net>
Sent: Friday, July 11, 2014 11:11 AM
To: Steve Wene; Rick Neal
Subject: Fwd: Truxton

----- Forwarded message -----

From: **Jim Bacus** <jimbacus@mac.com>
Date: Thu, Jul 10, 2014 at 5:52 PM
Subject: Re: Truxton
To: Teresa Neal <teresaneal@clear.net>

Hi, I agree with your figures. Thanks for handling this.

On Jul 10, 2014, at 3:13 PM, Teresa Neal wrote:

Jim,

According to your e-mail on July 17th, 2013 Truxton Water Company still owed you \$7263.96.
We figured the interest from March 2011 and the results are as follows-

Interest from 3/11-3/12-\$2286.88
Interest from 3/12-3/13-\$1589.33
Interest from 3/13-3/14-\$764.10
interest from 3/14-7/14-\$352.32
For a total of \$4992.63

This makes the total amount due- $\$7263.96 + \$4992.63 = \$12,256.59$

From July 17, 2013- June 6, 2014 Truxton Water Company has paid you-\$11,000

PLEASE ACKNOWLEDGE THAT YOU ARE IN AGREEMENT, AT WHICH TIME I WILL CUT A
CHECK FOR THE BALANCE DUE OF \$1256.59 AND DROP IN THE MAIL.

Let me know should you have any questions.

--

Teresa Neal
Blackhawk Developers
3001 Westwood Drive
Las Vegas, NV 89109
(702) 256-4006 Phone
(702)256-2522 Fax
teresaneal@clear.net

Jim Bacus
928-486-4775

"Don't wait to buy land, buy land and wait."
Will Rogers

--

Teresa Neal
Blackhawk Developers
3001 Westwood Drive
Las Vegas, NV 89109
(702) 256-4006 Phone
(702)256-2522 Fax
teresaneal@clear.net

TRUXTON CANYON WATER CO.
 1300 E. 10TH ST. SUITE 200
 TULSA, OK 74103-1000

4870

DATE: JUL 11, 2014

AMOUNT: \$ 1,256.59

PAY TO THE ORDER OF: JAMES S. BACUS

ONE THOUSAND TWO HUNDRED FIFTY-SIX AND 59/100 DOLLARS

Signature: [Handwritten Signature]

TRUXTON CANYON WATER CO.

#4870

\$1,256.59

TRUXTON CANYON WATER CO.

JAMES S. BACUS

4870

Check Number: 4870

Check Date: Jul 11, 2014

Duplicate

Check Amount: \$1,256.59

Invoice	Date	Discount Taken	Amount Paid	Quantity	Description
73113	8/5/13		1256.59		balance through 2011

